IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2947 OF 2004

Forward Seamen's Union
of India ..Petitioners.

Vs.

Union of India & anr. ..Respondents.

...

Mr.C.U.Singh with Ms.M.D'Souza i/b Mr.K.S.Bapat for the Petitioners.

Mr.V.S.Masurkar with Kiran Kandpile for Respondent Nos.1, 2 and 4.

Mr.Suresh Pakale for Respondent No.3.

Mr.S.K.Talsania with Mr.S.V.Uttam and Mr.K.Neherji i/b Mulla & Mulla & C.B. & C. for Respondent No.5.

WITH

WRIT PETITION NO.3286 OF 2004

The Shipping Corporation of
India Limited ..Petitioners.

Vs.

Union of India & Ors. ..Respondents.

...

Mr.S.K.Talsania with Mr.S.V.Uttam and Mr.K.Neherji i/b Mulla & Mulla & C.B. & C. for the Petitioners.

Mr.Kiran Kandpile with Mr.Suresh Pakale for Respondent No.1.

Mr.Rajiv Kumar with Mr.Nitin Sharma i/b Juris Consultus for Respondent No.4.

Mr.C.U.Singh with Ms.M.D'Souza i/b Mr.K.S.Bapat for Respondent No.5.

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CORAM : DR.D.Y.CHANDRACHUD, J.

5th May, 2005.

P.C. :

1. The dispute in the present case arises out of Off shore supply vessels belonging to the Oil & Natural Gas Corporation (ONGC) and the Shipping Corporation of India (SCI). In respect of certain O.S.V.s belonging to ONGC, manning contracts have been entered into between ONGC and SCI. SCI has in turn engaged the services of a catering contractor. Catering contracts have been entered into by ONGC or, as the case may be SCI with catering contractors in respect of diverse

vessels. The catering contractors in turn engage a variety of catering staff for rendering duties on board the off shore supply vessels.

2. In pursuance of an order that was passed on 16th February, 1999 by a Division Bench of this Court consisting of the Hon'ble The Chief Justice, Mr. Justice Y.K.Sabharwal (as the Learned Chief Justice then was) and Mr. Justice A.P.Shah, the Union of India was directed to constitute a Tribunal under Section 150 of the Merchant Shipping Act, 1958 and to refer to the Tribunal for adjudication Charters of demand that were raised by several Unions. In pursuance of the order of the Division Bench, the Central Government constituted a Tribunal. This resulted in an award dated 17th April, 2000 of Smt. Kumud Bansal who acted as the arbitrator.

3. This Petition has been instituted by the Forward Seamen's Union of India in order to seek implementation of a direction that was issued by the Shipping Master on 2nd July, 2004 in exercise of powers conferred by Section 132 of the Merchant Shipping Act, 1958 by which SCI was directed to

enter into Articles of Agreement in accordance with the provisions of the Act in respect of seamen engaged on board the vessel 'Samudra Sarvekshak', an off shore supply vessel belonging to ONGC which is under a manning contract with SCI. In purported exercise of powers conferred by Section 11(2) of the Merchant Shipping Act, the Director General of Shipping has set aside the order passed by the Shipping Master.

4. The principal issue which has been raised in this Petition is as to whether the employees engaged by catering contractors appointed by ONGC or, as the case may be, by SCI are seamen within the meaning of Section 3(42) of the Merchant Shipping Act, 1958. Section 3(42) defines the expression 'seaman' to mean every person (except a master, pilot or apprentice) employed or engaged as a member of the crew of a ship under the Act, but to include also a master in relation to the provisions of Sections 178 to 183. The allied issue is as to whether, in the event that these employees are seamen within the meaning of Section 3(42), whether they would be governed by the Kumud Bansal award. On behalf of the ONGC and the SCI,

it has been urged that the terms of reference of the Kumud Bansal award did not specifically incorporate this category of workmen and that therefore, the award will have no application. This is a matter of dispute between the contesting parties.

5. Section 150 of the Merchant Shipping Act, 1958 empowers the Central Government to constitute a Tribunal and to refer to the Tribunal for adjudication a dispute between seamen or any class of seamen or any union of seamen and the owners of ships in which such seamen are likely to be employed where such dispute exists or is apprehended. Section 150 provides for the constitution of this expert adjudicatory forum to decide disputes relating to any matter connected with or incidental to the employment of seamen. This would be wide enough to cover the disputes which have arisen in the present case including the status of the workmen and in the event, that the workmen are seamen for the purposes of the Act, what should be the appropriate terms and conditions of service to govern their engagement.

6. During the course of the hearing, there is a broad consensus between Counsel for the Petitioners, Counsel for ONGC and Counsel for SCI that a direction may be issued to the Central Government to take steps for constituting an adjudicatory Tribunal in terms of Section 150(1) of the Merchant Shipping Act, 1958. Having regard to the background and nature of the disputes raised, I am of the view that the constitution of a Tribunal under Section 150 is eminently necessary in the interests of justice. The disputes which have arisen must be resolved in order to resolve festering problems of unrest and disquiet within a section of the staff engaged on these vessels. The vessels subserve high public purposes of the Union of India and disputes of this nature should be expeditiously settled not only in the interests of the contesting parties but in the public interest as well.

7. Accordingly, this Petition is disposed of by directing the Government of India to constitute, in exercise of its powers under Section 150, a Tribunal for deciding inter alia the following disputes which have been raised by the Petitioners

in respect of the services of the employees engaged by Catering contractors on board the off shore supply vessels and multi-purpose supply vessels :

i) Whether the catering staff engaged on board off shore supply vessels, or as the case may be, multi purpose supply vessels,(owned by ONGC and/or SCI) whether or not engaged by the catering contractor, are seamen within the meaning of Section 3(42) of the Merchant Shipping Act, 1958;

ii) In the event that the answer to the first issue above is in the affirmative, whether these persons are governed by the terms and conditions of service which have been laid down in the Kumud Bansal award as notified on 17th April, 2000; and

iii) In the event that these persons are held to be seamen but not governed by the terms of the Kumud Bansal award, what should be the appropriate terms and conditions governing their service.

8. The Central Government is directed to constitute a Tribunal in compliance with the aforesaid direction within a period of two months. The Tribunal upon being constituted shall endeavour to conclude its proceedings and render its award within a period of four months thereafter.

9. All the rights and contentions of the parties are kept open.

10. The Tribunal shall adjudicate upon the issue uninfluenced by any of the observations contained in the order of the Shipping Master and/or the Director General of Shipping.

11. Counsel appearing for the Union of India and the Director General of Shipping in these proceedings undertakes to take steps to communicate the present order to the appropriate authority.

12. The Writ Petition is accordingly disposed of since no other point has been pressed on the either side. There shall be no order as to costs.